



May 8, 2000

Ms. Cari L. Curtis
McGinnis, Lochridge & Kilgore
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2000-1778

Dear Ms. Curtis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134971.

The Spring Branch Independent School District Police Department (the “department”) received a request for information relating to a former employee. Specifically, the requestor seeks a copy of a tape recording made at an administrative proceeding involving the employee. Additionally, the requestor seeks a copy of investigation file number 9906045. You state that a copy of the responsive tape will be made available to the requestor. You also state that you have released basic information from the investigation file in accordance with section 552.108(c) of the Government Code and *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976). You claim, however, that the remaining portions of the investigation file are excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Initially, we note that some of the submitted documents are medical records that are protected from disclosure under the Medical Practice Act (the “MPA”). The MPA provides that “a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.” Occupations Code § 159.002(b); *see* Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Thus, the submitted medical records may only be released in accordance with chapter 159 of the Occupations Code. *See* Occ. Code §§ 159.002(c), 159.004, 159.005; *see also* Open Records Decision No. 598 (1991) (in governing

access to specific subset of information, Medical Practice Act governs over more general provisions of the Public Information Act).

Section 552.108, the “law enforcement exception,” provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You explain that submitted documents concern a criminal investigation into the conduct of a former employee. You further explain that the submitted file was “created for and presented to the Public Integrity Division of the Harris County District Attorney’s Office for its determination of whether [the former employee] should be prosecuted for her conduct.” You have also submitted a letter from the Harris County District Attorney’s Office stating there was not sufficient evidence to support criminal prosecution. After reviewing your arguments and the submitted information, we conclude that you have shown the applicability of section 552.108(a)(2). *But see Morales v Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). Thus, the department may withhold the remaining portions of the investigation file from disclosure. We note, however, that you have the discretion to release all or part of the investigation file that is not otherwise confidential by law. Gov’t Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

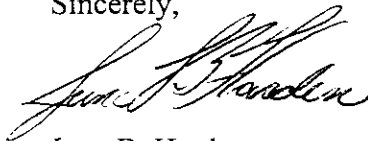
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 134971

Encl. Submitted documents

cc: Mr. John W. Armstrong, III
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(w/o enclosures)